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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,713	01/24/2002	Tilo Christ	401-1012	4247

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 04/22/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/053,713

Applicant(s)

CHRIST ET AL.

Examiner

Michael Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. In view of the appeal brief filed on January 26, 2004, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 13-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Medical Centre Daniël den Hoed ses laptops for tele-home-monitoring of cancer patients published on December 8, 2000.

4. Publication recites in full:

### **Medical Centre Daniël den Hoed ses laptops for tele-home-monitoring of cancer patients**

**Rotterdam 08 December 2000** The Medical Centre Dijkzigt/Daniël den Hoed in Rotterdam is the first hospital in The Netherlands to provide cancer patients who have been discharged from the clinic, with a laptop for health monitoring at home. Daniël den Hoed Clinical Centre forms part of the University Hospital of Rotterdam. The Medical Informatics Division at the Erasmus University in Rotterdam is co-ordinating the project, whereas the industry partner Lifeline Networks has taken up the role of application service provider.

Cancer patients, who no longer have to stay at the hospital, are handed a laptop computer to fill out medical documents at regular intervals. The forms, based on a decision tree, are sent electronically to a computer at LifeLine Networks. The questions can differ from case to case and depend on formerly provided answers. Both physical complaints and patients' psycho-social behaviour are being registered.

In a first phase, patients suffering from tumours in the neck or the brain are being monitored. Physicians have learnt through experience *that most of the complications occur within six weeks after surgical intervention*, according to Dr. Jaap van den Brink. *In this critical period, the patients are provided with the laptop. Whenever a problem emerges, it is possible to directly trace it*, as Dr. van den Brink explained. Also the fact that doctors now have the chance to enter into communication with a well-targeted patient group, of whom the power to speak has been affected, constitutes an additional advantage of this approach.

General practitioners and medical experts can remotely access the system at Lifeline Networks to consult their own patients' medical records exclusively. *The opportunity to view their own personal data is also open to the patients, who at the same time are allowed to ask specific questions to the physicians, discuss disease-concerned issues with other cancer patients, and search for practical information.*

*The electronic form application includes additional benefits. A well-defined protocol clearly indicates which answers to the questionnaire require special attention or give cause to alarm. In such cases, an e-mail message is being sent automatically to a medical support team, consisting of two health care takers who are specialised in oncology as well as in home care. They decide which type of action has to be undertaken. In case of emergency, they will contact the general practitioner or medical expert.*

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In the pilot phase, twelve laptops have been reserved to monitor a number of fifty patients during the first year. The research project has been awarded a DFL one million grant by the City of Rotterdam OBR innovation fund and the Roparun organisation. All system functions are based upon Web-technology and communications are transmitted over a private intranet. The application runs on a Web server, coupled to an Oracle-database. The users have access to the different features via a Web browser. Within two years, according to the Automatisering Gids, a scientific evaluation study will be set up to assess the project results.

*[emphasis added]*

The examiner defers to the disclosure of the article to reject claims 13-22 because the article (specifically the italicized portions) obviates the claimed language extremely well. However, the examiner points to two facts that may clear up any issues the inventor may have. First, the web browser inherently uses a voice or fax line. And Second, because the article refers to a surgical procedure of cancer patients, and the article states, "... [patients] are allowed to ask specific questions to the physicians, discuss disease-concerned issues with other cancer patients, and search for practical information" it is inherent that this covers at least wound-healing problems of cancer patients.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 13-22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on (703) 308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Michael Astorino', with a stylized flourish at the end.

Michael Astorino  
April 13, 2004